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*Attorneys for Plaintiff Jennielyn Alcarion and the Class*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

JENNIELYN ALCARION, an  
individual, on behalf of herself and all  
others similarly situated

Plaintiff,

v.

CHARLOTTE RUSSE, INC., a  
California corporation; CHARLOTTE  
RUSSE MERCHANDISING, INC., a  
California corporation; and DOES 1-  
50, inclusive,

Defendants.

Case No. 13-cv-01176-DMS-NLS

**FIRST AMENDED CLASS ACTION  
COMPLAINT FOR:**

**1. VIOLATIONS OF THE  
TELEPHONE CONSUMER  
PROTECTION ACT, 47 U.S.C.  
§ 227**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Jennielyn Alcarion ("Plaintiff"), on behalf of herself and the Class  
2 of all other similarly situated persons defined below, demands a trial by jury and  
3 hereby complains and alleges upon information and belief as follows:

4 **NATURE OF THE ACTION**

5 1. This action is brought on behalf of all consumers who have received  
6 unsolicited and un-consented to text messages on their cellular telephones from  
7 Charlotte Russe, Inc. and Charlotte Russe Merchandising, Inc. ("Defendants"), in  
8 violation of the Federal Telephone Consumer Protection Act.

9 **JURISDICTION AND VENUE**

10 2. The Superior Court of the State of California has jurisdiction over this  
11 action pursuant to Article VI, section 10 of the California Constitution, because  
12 this case is not a cause given by statute to other trial courts.

13 3. This Court has personal jurisdiction over Defendants because  
14 Defendants are headquartered in San Diego, California. Further, Defendants are  
15 registered with the California Secretary of State to do business in California, and  
16 did sufficient business in, has sufficient contacts with, and intentionally availed  
17 themselves of the laws and markets of California through the promotion, sale,  
18 marketing, distribution and operation of its products and services, as to render  
19 exercise of jurisdiction by this Court permissible.

20 4. Venue is proper in San Diego because Plaintiff resides in the County  
21 of San Diego, California, and Defendants are headquartered in San Diego,  
22 California and are currently doing and have done during the relevant time period  
23 significant amounts of business in San Diego. In addition, many of the acts and  
24 practices giving rise to Plaintiff's claims occurred in this County.

25 **PARTIES TO THE ACTION**

26 5. Plaintiff Jennielyn Alcarion is a real person residing in the County of  
27 San Diego, State of California, and received multiple unsolicited and un-consented  
28 to text messages from Defendants.

1           6.     On information and belief, Defendants are California corporations that  
2 provide retail clothing and accessories to customers.

3           7.     Plaintiff is currently ignorant of the true names and capacities,  
4 whether individual, corporate, associate, or otherwise, of the Defendants sued  
5 herein under the fictitious names Does 1 through 100, inclusive, and therefore, sue  
6 such Defendants by such fictitious names. Plaintiff will amend this complaint to  
7 allege the true names and capacities of said fictitiously named Defendants when  
8 their true names and capacities have been ascertained. Plaintiff is informed and  
9 believes and thereon alleges that each of the fictitiously named Doe Defendants is  
10 legally responsible in some manner for the events and occurrences alleged herein,  
11 and for the damages suffered by Plaintiff and the Class. Each reference in this  
12 complaint to "Defendants," "Defendant," or a specifically named defendant refers  
13 also to all Defendants sued under fictitious names.

14           8.     Plaintiff is informed, believes, and thereon alleges that all Defendants  
15 were at all relevant times acting as actual agents, conspirators, aiders and abettors  
16 who provided substantial assistance with knowledge of the wrongful conduct,  
17 ostensible agents, partners and/or joint venturers and employees of all other  
18 Defendants, and that all acts alleged herein occurred within the course and scope of  
19 said agency, employment, partnership, joint venture, conspiracy and/or enterprise,  
20 and with the express and/or implied permission, knowledge, consent, authorization  
21 and ratification of their Co-Defendants; however, this allegation is pleaded as an  
22 "alternative" theory wherever not doing so would result in a contradiction with  
23 other allegations.

24           9.     As an alternative theory, Plaintiff is informed and believes, and on  
25 that basis alleges, that Defendants are alter egos of each other. Plaintiff is  
26 informed, believes, and on that basis alleges, that there is common control over  
27 Defendants, and they operate pursuant to a common business plan. There is unity  
28 of interest among Defendants. The alternative alter-ego relationship among the

1 Defendants should be recognized to prevent an injustice. If the alter-ego  
2 relationship among Defendants is not recognized, an inequity will result because  
3 an entity responsible for wrongdoing will be shielded from liability. Moreover, the  
4 Co-Defendant entities that make, in whole or in part, the decisions concerning the  
5 wrongdoing alleged herein would escape liability, which is inequitable.  
6 Furthermore, the alter-ego relationship should be recognized to ensure effective  
7 injunctive and declaratory relief, so that the wrongful practices alleged herein are  
8 not relocated to an affiliated company.

9 **GENERAL ALLEGATIONS**

10 10. Visual messages have been transmitted through telephone connections  
11 for about as long as telephones have existed.

12 11. In about the 1870s, stock exchange data was transmitted over special  
13 telegraph lines which utilized stock tickers to print the data out as visual text  
14 messages.

15 12. By about the 1920s, telephone connections were used to transmit and  
16 receive visual text messages via teletypewriters (TTYs).

17 13. In about the 1960s, technology took a step forward with the  
18 emergence of telecommunication devices for the deaf (TDDs), allowing telephone  
19 users to use ordinary telephones to converse via visual text messages through a  
20 telephone connection.

21 14. By the 1980s, a new technology emerged which permitted visual text  
22 messages to be transmitted to and received by telephonic devices through short  
23 message service (SMS) technology.

24 15. SMS technology became widespread in the United States in the past  
25 decade together with the growth of telephonic services which permit SMS  
26 messages to be exchanged in a conversational manner.

27 ///

28 ///

1           16. In the past decade, a newer technology also emerged that, once a  
2 telephone connection is made, permits the transmission of multimedia messages  
3 which can play directly on phones via a multimedia message service (MMS).

4           17. MMS messages can include SMS-like text messages as well as audio  
5 and visual messages of different types, including without limitation moving,  
6 pictorial images (e.g., slideshows, movies, et cetera) and long, scrolling text  
7 messages.

8           18. MMS technology has become widespread in the United States in the  
9 past few years.

10          19. Today, billions of consumers worldwide have telephonic devices  
11 which permit them to receive SMS and/or MMS messages, permitting consumers  
12 throughout California and the rest of the United States to engage in telephone  
13 conversations utilizing such messages.

14          20. For many consumers (e.g., hearing impaired persons), SMS and/or  
15 MMS messages are the only way that they converse on the telephone. However,  
16 marketing (a/k/a commercial solicitation) through message service messages is  
17 inherently injurious to consumers who have telephonic devices with SMS and/or  
18 MMS message capabilities (e.g., cellular telephones and pagers). In fact, such  
19 marketing has injured consumers. For example, as a consequence of marketing via  
20 message service messages:

- 21           a. Consumers incur increased monetary costs for their message
- 22           services;
- 23           b. Consumers lose storage capacity on their telephones and related
- 24           devices;
- 25           c. The limited storage capacity of telephonic devices can be
- 26           exhausted by unwanted message service messages resulting in the
- 27           inability of consumers to receive necessary and/or expected
- 28           communications;

- d. Consumers are deprived of the opportunity to immediately question a seller of goods and services about the veracity of the seller's claims;
- e. The privacy of consumers is invaded;
- f. The telephone networks upon which consumers rely are used inefficiently and harmed to the detriment of consumers;
- g. Consumers are annoyed and harassed;
- h. Consumers and their property are susceptible to injury and/or are injured in other ways in accord with proof to be presented at trial.

21. On or about March 27, 2012, Defendants sent Plaintiff an unsolicited and un-consented to text message advertisement soliciting Plaintiff's patronage. The text message specifically identified the sender as "Charlotte Russe."

22. Upon information and belief, Defendants send numerous such unsolicited and un-consented to text messages to many persons.

23. Due to the generic nature of the text message and the fact that Plaintiff regularly received similar text messages from Charlotte Russe, Plaintiff believes that the message was sent from an automated dialing machine.

### **CLASS ALLEGATIONS**

24. Plaintiff brings this action on her own behalf and on behalf of all other persons similarly situated, pursuant to the provisions of Rule 23 of the Federal Rules of Civil Procedure.

25. Representative Plaintiff brings this class action on behalf of herself and as a representative of the following class of persons entitled to remedies under law including, but not limited to, damages:

All persons in the United States of America who were sent, to their cellular or pager numbers, unsolicited and un-consented to SMS or MMS messages which marketed Charlotte Russe products or discounts.

1 Excluded from the Class are all managers and directors of Defendants and  
2 members of their immediate families, the Court, and legal counsel for either side,  
3 and all members of their immediate families.

4 26. This action has been brought and may properly be maintained as a  
5 class action because there is a well-defined community of interest in the litigation:

6 a. **Numerosity:** The Class is so numerous that joinder of all members  
7 is impractical. Because Defendants operate large, national retail  
8 stores, there are likely numerous members of the Class.

9 b. **Ascertainability:** The identities of the Class members are  
10 ascertainable from Defendants' records.

11 c. **Common Questions Predominate:** There are questions of law and  
12 fact common to the Class, which questions predominate over any  
13 questions affecting only individual members. The principal issues  
14 include, *inter alia*:

15 i. Whether Defendants negligently caused violations of the  
16 Telephone Consumer Protection Act, 47 U.S.C. section 227,  
17 when sending unsolicited and un-consented to SMS or MMS  
18 messages to Plaintiff and the Class;

19 ii. Whether Defendants willfully caused violations of the  
20 Telephone Consumer Protection Act, 47 U.S.C. section 227,  
21 when sending unsolicited and un-consented to SMS or MMS  
22 messages to Plaintiff and the Class;

23 iii. Whether Defendants used an automatic telephone dialing  
24 system to send unsolicited and un-consented to SMS or  
25 MMS messages to Plaintiff and the Class;

26 iv. Whether Plaintiff and the Class are entitled to damages for  
27 Defendants' actions;

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1 v. Whether Defendants should be enjoined from engaging in  
2 such conduct in the future.

3 d. **Typicality:** Based on the conduct described above, Plaintiff's  
4 claims are typical of the claims of the members of the Class.  
5 Plaintiff and all members of the Class have similar claims and  
6 remedies arising out of Defendant's common course of conduct  
7 complained of herein.

8 e. **Adequacy:** Plaintiff will fairly and adequately protect the interests  
9 of the members of the Class. Plaintiff is committed to vigorously  
10 litigating this matter, and has retained counsel experienced in  
11 handling class claims. Neither Plaintiff nor Plaintiff's counsel have  
12 any irreconcilable conflicting interests that might cause them not to  
13 vigorously pursue this claim.

14 f. **Superiority:** A class action is a superior method for the fair and  
15 efficient adjudication of this controversy. Class-wide damages are  
16 essential to induce Defendants to comply with federal law.  
17 Management of these claims is likely to present significantly fewer  
18 difficulties than those presented in many class claims. A class  
19 action is superior to other available means for the fair and efficient  
20 adjudication of this controversy since individual joinder of all  
21 members would be impracticable. Class action treatment will  
22 permit a large number of similarly situated persons to prosecute  
23 their common claims in a single forum simultaneously, efficiently,  
24 and without the unnecessary duplication of effort and expense that  
25 numerous individual actions would engender. Furthermore, since  
26 individual member's claims for damages are relatively modest, the  
27 expenses and burdens of litigating individual actions would make  
28 it difficult or impossible for individual members of the Class to



1 redress the wrongs done to them. An important public interest will  
2 be served by addressing the matter as a class action, substantial  
3 economies to the litigants and to the judicial system will be  
4 realized, and the potential for inconsistent or contradictory  
5 adjudications will be avoided.

6 **FIRST CAUSE OF ACTION**

7 **Violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227**

8 27. Plaintiff reasserts and re-alleges the allegations set forth in the above  
9 paragraphs as if the same were alleged herein this count.

10 28. At all times material herein, Plaintiff has been entitled to the rights,  
11 protections, and benefits provided under the Telephone Consumer Protection Act,  
12 47 U.S.C. § 227.

13 29. Negligently, recklessly, willfully, and/or intentionally, Defendants  
14 directly and/or vicariously engaged in acts, omissions, and/or other conduct as  
15 referenced herein this complaint that violates the Telephone Consumer Protection  
16 Act. Defendants directly and/or vicariously used automatic telephone dialing  
17 systems to initiate unsolicited and un-consented to telephone calls to Plaintiff's  
18 cellular telephone and/or pager numbers.

19 30. Plaintiff is entitled to recover \$500 in damages from the Defendants  
20 for each violation of the Telephone Consumer Protection Act.

21 31. Additionally, Plaintiff is entitled to all damages referenced herein and  
22 in accord with proof, attorneys' fees, costs, treble damages, and other remedies  
23 allowed by the Telephone Consumer Protection Act.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, on behalf of herself and all others similarly situated,  
26 Plaintiff demands judgment against Defendants and prays that this Court do the  
27 following:

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1           A.     Order Defendants to make Plaintiff and the Class whole with an  
2 award of damages in accord with the allegations of this complaint and proof to be  
3 presented at trial.

4           B.     Order Defendants to make Plaintiff and the Class whole by providing  
5 appropriate prejudgment interest, in an amount to be determined at trial, and other  
6 affirmative relief necessary to eradicate the effects of its unlawful practices.

7           C.     Order Defendants to pay Plaintiff and the Class punitive and/or treble  
8 damages to the fullest extent allowed by law.

9           D.     Award Plaintiff and the other class members the costs of this action,  
10 including attorneys' fees,

11          E.     In accord with proof at trial, grant any additional or further relief as  
12 provided by law or equity that the Court finds appropriate, equitable, or just.

13  
14 Dated: July 1, 2013

**KEARNEY LITTLEFIELD, LLP**  
**STONEBARGER LAW, APC**

15  
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17  
18 By: /s/ Richard D. Lambert

19 Richard D. Lambert  
20 Attorneys for Plaintiff

**DEMAND FOR JURY TRIAL**

21 Plaintiff hereby demands trial by jury.

22  
23 Dated: July 1, 2013

**KEARNEY LITTLEFIELD, LLP**  
**STONEBARGER LAW, APC**

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26  
27 By: /s/ Richard D. Lambert

28 Richard D. Lambert  
Attorneys for Plaintiff